E-FILED
Rachel Dombrowski, Clerk
Appellate Court of Maryland
7/12/2023 12:01 AM

RECORD EXTRACT OF APPELLANT

IN THE
APPELLATE COURT
OF MARYLAND

September Term 2023,
No. 61

JUSTIN HOLDER
Appellant
V.
BENJAMIN ESTES
Appellee

Appeal from the Circuit Court of Washington County
The Honorable Andrew F. Wilkinson

RECORD EXTRACT

Volume 4

JUSTIN HOLDER
APPELLANT

E-FILED Washington Circuit Court 5/19/2021 8:08 AM System System

E-FILED; Washington Circuit Court
Docket: 5/19/2021 8:08 AM; Submission: 5/19/2021 8:08 AM

0708

CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND
24 Summit Avenue
Hagerstown, Maryland 21740
Civil/Family/Juvenile: 301-790-4972 Criminal: 301-790-7941 General: 301-733-8660 Assignment: 240-313-2540
Maryland Relay Service: 711 Fax Civil/Family/Juvenile: 301-791-0507

Case Number: **C-21-CV-20-000430**
Other Reference Numbers:

BENJAMIN ESTES VS. JUSTIN HOLDER, ET AL.

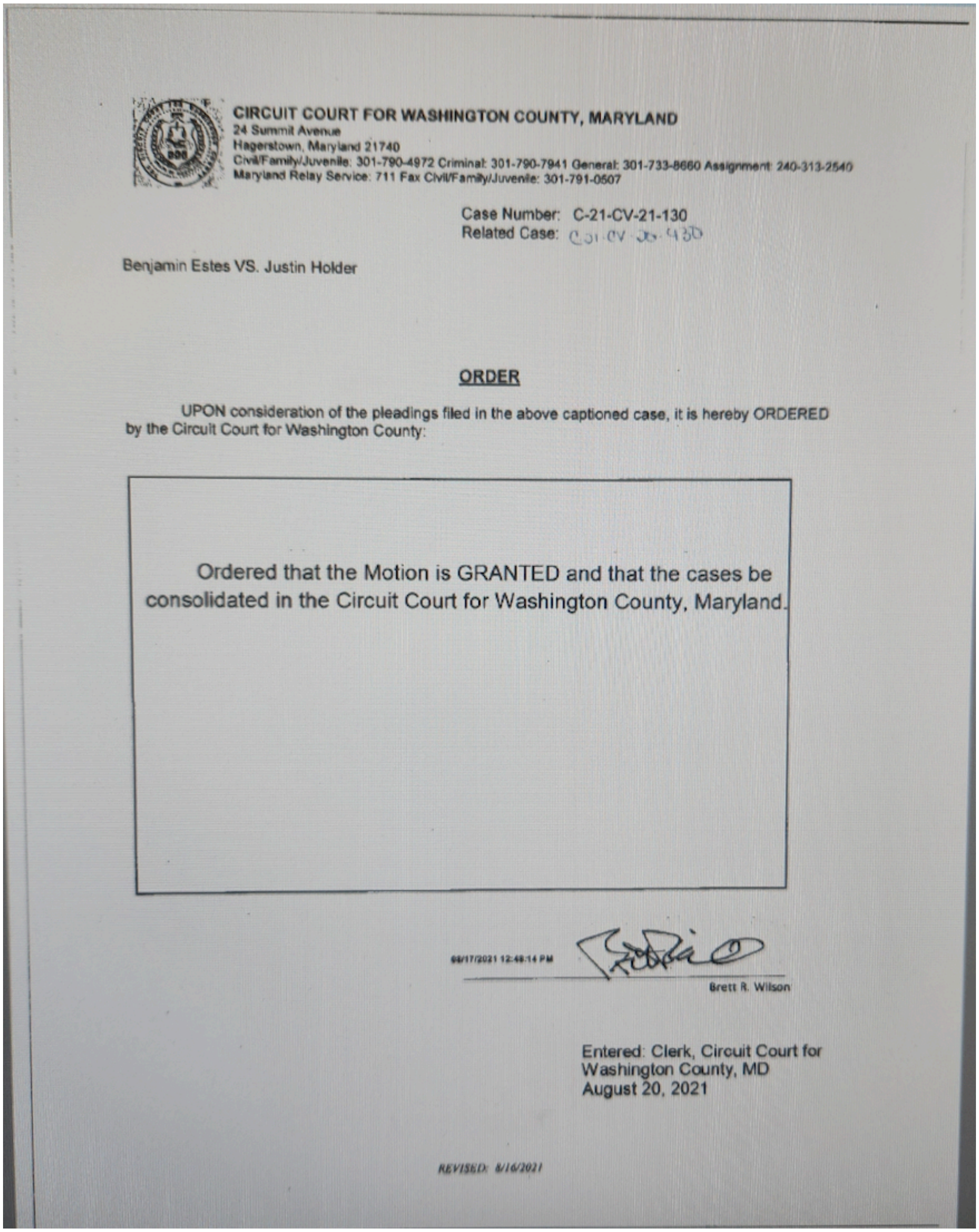
ORDER

Motion for Summary Judgement is DENIED.

05/18/2021
Date

Judge
Mark K. Boyer

Entered: Clerk, Circuit Court for
Washington County, MD
May 19, 2021



CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND
24 Summit Avenue
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Maryland Relay Service: 711 Fax Civil/Family/Juvenile: 301-791-0507

Case Number: C-21-CV-21-130
Related Case: C-21-CV-20-430

Benjamin Estes VS. Justin Holder

ORDER

UPON consideration of the pleadings filed in the above captioned case, it is hereby ORDERED by the Circuit Court for Washington County:

Ordered that the Motion is GRANTED and that the cases be consolidated in the Circuit Court for Washington County, Maryland.

08/17/2021 12:48:14 PM

Brett R. Wilson

Entered: Clerk, Circuit Court for
Washington County, MD
August 20, 2021

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES	*	
Plaintiff	*	
v.	*	CASE NO.: C-21-CV-20-000430
JUSTIN HOLDER, *et al.*	*	
Defendants	*	

ORDER OF COURT

WHEREAS in ruling on a motion to dismiss, the Court "must assume the truth of all well-pled facts in the complaint as well as the reasonable inferences that may be drawn from those relevant and material facts." *Porterfield v. Mascari II, Inc.*, 374 Md. 402, 414 (2003). "Dismissal is appropriate only if the well-pled facts and reasonable inferences, viewed in the light most favorable to the plaintiff, fail to afford that party the relief requested." *Id.*

AND WHEREAS in the Second Amended Complaint (the "Complaint"), Plaintiff Benjamin Estes alleges that "Plaintiff is the fee simple owner" of the property at issue in this case (therein, the "Estes Property") and that the Estes Property extends to a boundary "depicted on Exhibit A starting at the point where 'L10' ends and 'L11' begins, thence running to the opposite end of a line 269.50 long running S25°59'35"W, terminating on/in or near a bridge abutment."

AND WHEREAS in the Complaint, Plaintiff does not claim to hold title to, nor seeks to quiet the title of, any property other than the Estes Property.

AND WHEREAS "[w]hen two or more cases are consolidated, . . . they become, for the purposes of trial, one case." *Holloway v. Wright*, 21 Md.App. 615, 617 n.1 (1974). By Order dated August 20, 2021, this case has been consolidated with Case Number C-21-CV-21-130.

AND WHEREAS other than this case, no action at law or proceeding in equity is pending to enforce or test the validity of the title for the Estes Property, and the Court is not aware of any lien, encumbrance, or other adverse claim against the Estes Property. *See* Md. Code Ann., Real Prop. § 14-108(a).

AND WHEREAS the resolution of this case would not affect any other pending litigation.

Upon consideration of Defendant Justin Holder's Motion to Dismiss Count V - Quiet Title, all responses thereto, and the record in this case, it is this 20th day of September, 2021, by the Circuit Court for Washington County, Maryland

Entered: Clerk, Circuit Court for
Washington County, MD
September 21, 2021

ORDERED that Mr. Holder's Motion to Dismiss Count V - Quiet Title shall be, and hereby is, denied.

Andrew F. Wilkinson
Judge

cc: Brendan Callahan, Esquire
P.O. Box 1091
Prince Frederick, MD 20678
Attorney for Plaintiff

Matthew Ruble, Esquire
129-3 West Patrick Street
Frederick, MD 21701
Attorney for Defendant Deena Holder

Justin Holder, *pro se*
308 West Chaplin Street
Sharpsburg, MD 21782
Defendant

Talley H-S. Kovacs, Esquire
580 Taylor Avenue, Suite C-4
Annapolis, MD 21401
Attorney for Defendant Department of Natural Resources, State of Maryland

Robert Kline, III, Esquire
138 West Washington Street, Suite 200
Hagerstown, MD 21740
Attorney for Defendant Uncle Eddie's Brokedown Palace, LLC

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES

Plaintiff

v. **Case No. C-21-CV-20-000430**

JUSTIN HOLDER, *et al.*

Defendants

STIPULATION OF PARTIAL DISMISSAL

The Plaintiff, Benjamin Estes, and one of the Defendants, State of Maryland, to the Use of the Department of Natural Resources (the "State of Maryland") hereby:

STIPULATE, subject to the following stipulations and conditions, to the dismissal of the State of Maryland from this case by virtue of the following stipulations resulting in the State of Maryland no longer having an interest in the outcome of this case and thus no longer being a necessary party to its adjudication; and the parties further

STIPULATE, that the former railroad bed known as the Weverton-to-Roxbury Rail Trail ("WRRT" or "Property") is owned by the State of Maryland to the Use of the Department of Natural Resources pursuant to a Quitclaim Deed dated September 6, 1991 recorded in the Land Records of Washington County at Liber 1015 folio 796 ("Quitclaim Deed"); and the parties further

STIPULATE, that by agreement of all parties, the legal ownership of the former railroad bed is not being litigated or adjudicated in this case as stated and memorialized in the jointly-filed Stipulation filed in this case on December 17, 2021; and the parties further

STIPULATE, that by agreement of all parties, the right of the public, if any, to make use of the waters of the Little Antietam Creek, or any other waters on the Estes Property, are not being litigated or adjudicated in this case as stated and memorialized in the jointly-filed Stipulation filed in this case on December 17, 2021; and the parties further

STIPULATE, that the southern boundary of the Estes Property (Tax ID No. 19-013316) terminates at the northern boundary of the State of Maryland's Property, said northern boundary, the shared boundary being defined as follows:

> Beginning at a point on the boundary of the land conveyed to the State of Maryland, to the use of the Department of Natural Resources, by CSX Transportation, Inc. by deed dated September 6, 1991 and recorded in the land records of Washington County in Liber 1015 at Folio 796 at the intersection with the South 11d 29' 47" West 86.08 foot line of the Benjamin N. Estes property as shown on the Preliminary/Final Plat of Subdivision of Lot 2 for M. Yvonne & Maxwell B. Hope, II and recorded as Plat #9186 among the plat records of Washington County and running with the land of the State of Maryland the following four courses:
>
> 1. North 42d 31' 50" West 21.30 feet
> 2. North 22d 22' 04" West 103.82 feet
> 3. North 34d 31' 23" West 100.18 feet
> 4. North 52d 02' 49" West 63.39 feet to intersect the North 25d 03' 21" East 280.50 foot line as shown on the aforesaid plat of the Estes property
>
> , without any overlap; and the parties further

STIPULATE, that Plaintiff disclaims and abandons to the State of Maryland any right, title or interest that he might have or claim in the State of Maryland's Property; and the parties further

STIPULATE, that the Quitclaim Deed does not provide, convey or grant to the State of Maryland any right, title or interest to the fast land or any portion of the Little Antietam Creek (or any other creeks, streams or tributaries) located within the boundaries of the Estes Property (Tax ID No. 19-013316) as those boundaries are now or hereafter defined, including, but not limited to, the land underlying the Little Antietam Creek (or any other creeks, streams or tributaries); and the parties further

STIPULATE, that the State of Maryland reserves the right to regulate or assert claims over the water resources of Little Antietam Creek (or any other creeks, streams or tributaries), including nontidal waterways, the nontidal floodplain, nontidal wetlands and their buffers, and water appropriations; and the parties further

STIPULATE, that the State of Maryland is hereby dismissed as a party defendant from this case and with respect to all claims asserted by the Plaintiff on his Complaint filed herein; and the parties further

STIPULATE, that the dismissal of the State of Maryland be without prejudice.

SO STIPULATED.

SEEN AND AGREED:

/s/
Aaron D. Neal, Esq.
CPF/AIS No.: 0712120108
McNamee Hosea, P.A.
6411 Ivy Lane, Suite 200
Greenbelt, MD 20770
301-441-2420 (tel.)
301-982-9450 (fax)
aneal@mhlawyers.com
Attorneys for the Plaintiff

SEEN AND AGREED:

/s/
Talley H-S. Kovacs, Esq.
CPF/AIS No.: 0912160140
Assistant Attorney General
Office of the Attorney General
580 Taylor Avenue, Suite C-4
Annapolis, Maryland 21401
410-260-8351 (tel.)
410-260-8364 (fax)
Talley.Kovacs@maryland.gov
Attorneys for the State of Maryland, to the Use of the Department of Natural Resources

Certificate of Service

I hereby certify that on this 7th day of January, 2022, the foregoing paper was filed via MDEC and thus served on all counsel of record electronically, including:

Justin Holder
Talley Kovacs, Esq.
Brandy Peeples, Esq.
Robert Kline, Esq.

/s/
Aaron D. Neal, Esq.

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES *

Plaintiff

vs. * Case No.: C-21-CV-20-430

JUSTIN HOLDER, *et al.*

Defendants *

ORDER

(Dismissal of State of Maryland)

Defendant Justin Holder filed a Line objecting to the stipulated dismissal of the State of Maryland. This court reviewed the Stipulations filed December 17, 2021 and January 7, 2022, and various plats and land records concerning this matter. The court notes the 2006 amendment to Maryland Rule 2-506(a) which now allows a stipulation to be signed only by the parties involved in the claim being dismissed, not all parties in the case. Having determined that the resolution of the location of the property line between the Estes property and the State of Maryland property is a different claim than the dispute concerning the location of the property line between the Estes property and the Uncle Eddie's Brokedown Palace, LLC property, it is this 17th day of January 2022, by the Circuit Court for Washington County, Maryland, hereby:

ORDERED, Defendant Justin Holder's Line objecting to the requested dismissal of the State of Maryland (treated here as a motion) is denied; and

ORDERED, Defendant State of Maryland, to the use of the Department of Natural Resources, is dismissed as a party without prejudice.

Andrew F. Wilkinson
Judge, Circuit Court for Washington County

cc: Counsel and parties

Entered: Clerk, Circuit Court for
Washington County, MD
January 21, 2022

0717

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES	*	
Plaintiff		
vs.	*	Case No.: C-21-CV-20-430
JUSTIN HOLDER, *et al.*		
Defendants	*	

ORDER

(Line requesting permission to file for Consolidation)

Defendant Justin Holder filed a Line requesting permission to file a Motion to Consolidate this case (the "Estes Case") with Young v. Holder, C-21-CV-20-371 (the "Young Case"). Defendant Holder suggests a motion is proper in order for the court to consider the judicial economy that can be achieved given that the cases involve the lands of various parties in close proximity to each other. In addition, be suggests that his Bill *Quia Timet* filed in the Young Case, and previously dismissed by this Court, is now active again given that the Court of Special Appeals determined that his appeal was not timely filed (see CSA-REG-0624-2021). As such, resolution of the Bill *Quia Timet* could have wide ranging effects on the rights and responsibilities of all parties in the Estes Case and the Young Case.

Defendant Holder's Bill *Quia Timet* in the Young Case is not active in this court. It was dismissed with prejudice. Defendant Holder appealed the dismissal. The Court of Special Appeals declined to consider Defendant Holder's appeal because the Young Case has not reached final judgment and the dismissal of the Bill *Quia Timet* is not, itself, a final judgment. Defendant's suggestion that the Court of Special Appeals "returned the claim to the Court and it is alive again" is incorrect. The Bill *Quia Timet* claim is and remains dismissed with prejudice.

Given that the Estes Case and the Young Case involve separate parties, separate parcels, separate claims, and separate defenses, given that Defendant Holder's Bill *Quia Timet* has been, and remains, dismissed with prejudice, and given that extensive discovery has taken place in both cases separately, a motion for consolidation is not justified or necessary to assist with judicial economy. In addition, given that the Estes Case and the Young Case involve separate parties, parcels, and claims, and the Bill *Quia Timet* claim remains dismissed in the Young Case, determinations made in one case are not expected to affect the rights of parties in the other case.

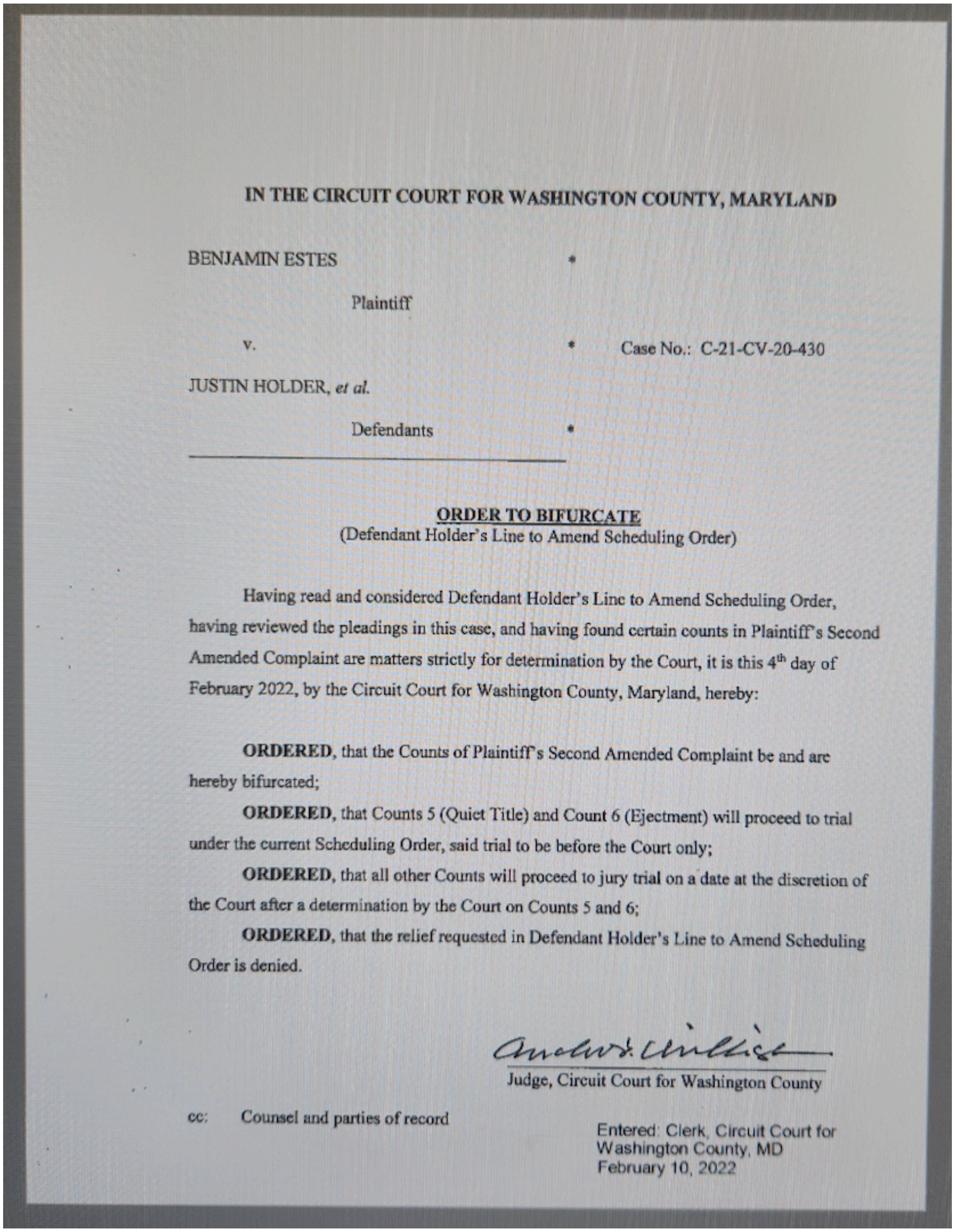
Entered: Clerk, Circuit Court for
Washington County, MD
January 21, 2022

Therefore, it is this 17th day of January 2022, by the Circuit Court for Washington County, Maryland, hereby:

ORDERED, Defendant Justin Holder's request to file a motion to consolidate C-21-CV-20-430 and C-21-CV-20-371 is denied.

Andrew F. Wilkinson
Judge, Circuit Court for Washington County

cc: Counsel and parties



IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES *

Plaintiff

v. * Case No.: C-21-CV-20-430

JUSTIN HOLDER, *et al.*

Defendants *

ORDER TO BIFURCATE

(Defendant Holder's Line to Amend Scheduling Order)

Having read and considered Defendant Holder's Line to Amend Scheduling Order, having reviewed the pleadings in this case, and having found certain counts in Plaintiff's Second Amended Complaint are matters strictly for determination by the Court, it is this 4th day of February 2022, by the Circuit Court for Washington County, Maryland, hereby:

ORDERED, that the Counts of Plaintiff's Second Amended Complaint be and are hereby bifurcated;

ORDERED, that Counts 5 (Quiet Title) and Count 6 (Ejectment) will proceed to trial under the current Scheduling Order, said trial to be before the Court only;

ORDERED, that all other Counts will proceed to jury trial on a date at the discretion of the Court after a determination by the Court on Counts 5 and 6;

ORDERED, that the relief requested in Defendant Holder's Line to Amend Scheduling Order is denied.

Judge, Circuit Court for Washington County

cc: Counsel and parties of record

Entered: Clerk, Circuit Court for
Washington County, MD
February 10, 2022

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES *

Plaintiff

v. * Case No.: C-21-CV-20-430

JUSTIN HOLDER, *et al.*

Defendants *

ORDER

(Defendant Justin Holder's Motion for Summary Judgment)

Having read and considered Defendant Justin Holder's Motion for Summary Judgment and Plaintiff's correspondence seeking permission to file a Motion to Strike, and this court having determined there is no good cause upon which the Motion for Summary Judgment could be granted, it is this 16th day of May 2022, by the Circuit Court for Washington County, Maryland, hereby:

ORDERED, that Defendant Justin Holder's Motion for Summary Judgment be and is hereby DENIED; and

ORDERED, that Plaintiff's request to file a Motion to Strike is moot.

Judge, Circuit Court for Washington County

cc: Counsel and parties of record

Entered: Clerk, Circuit Court for
Washington County, MD
May 17, 2022

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES *

Plaintiff

v. * Case No.: C-21-CV-20-430

JUSTIN HOLDER, *et al.*

Defendants *

ORDER

(Defendant Justin Holder's Motion to Amend Denial of Summary Judgment)

Having read and considered Defendant Justin Holder's Motion to Amend this court's previous Order denying summary judgment, and this court having determined there is no good cause to alter or amend the Order of May 16, 2022, it is this 23rd day of May 2022, by the Circuit Court for Washington County, Maryland, hereby:

ORDERED, that Defendant Justin Holder's Motion to Alter or Amend the previous denial of summary judgment be and is hereby DENIED.

Judge, Circuit Court for Washington County

cc: Counsel and parties of record

Entered: Clerk, Circuit Court for
Washington County, MD
May 25, 2022

CIRCUIT COURT FOR WASHINGTON COUNTY

BENJAMIN ESTES

Plaintiff

v. Case No.: C 21 CV 20 000430

JUSTIN HOLDER, ET AL.

Defendants

Order as to Uncle Eddie's Brokedown Palace LLC's Motion for Clarification Of this Court's Order dated September 20, 2022

Upon consideration of the Motion for Clarification filed herein by Defendant, Uncle Eddie's Brokedown Palace, LLC, consent of Uncle Eddie's Brokedown Palace, LLC to the Court entering an Order enjoining further trespass onto Plaintiff's Property as indicated on Plat 10955 filed in the Land Records of Washington County, and for other good cause shown, it is by the Circuit Court for Washington County hereby

ORDERED, that the Court's Order dated and entered on September 20, 2022 is not altered, modified and/or revised by the entry of this Order; and it is further

ORDERED, that the Court has reached a decision detailed in the September 20, 2022 Order that the Estes/Uncles Eddie's property line is as indicated on Plat 10955 as filed in the Land Records of Washington County; and it is further

ORDERED, that Counts 5 and 6 of the Plaintiff's Second Amended Complaint have been granted in favor of the Plaintiff against the Defendant, Uncle Eddie's Brokedown Palace, LLC; and it is further

Entered: Clerk, Circuit Court for
Washington County, MD
September 22, 2022

ORDERED, that Uncle Eddie's Brokedown Palace, LLC has consented to the Court entering an Order further enjoining the further trespass on Plaintiff's land as indicated on Plat 10955 as filed in the Land Records of Washington County; and it is further

ORDERED, that Uncle Eddie's Brokedown Palace, LLC and counsel for Uncle Eddie's Brokedown Palace, LLC be and hereby excused from attending the bench trial scheduled for October 4 through October 6, 2021 inclusive.

ORDERED, the issues for the bench trial are:

1. Whether an injunction should be issued;
2. If issued, the scope of the injunction, with particular attention to the issue of the use by others, including the Holder family, of the bottom of the Antietam Creek as the creek traverses inside the Plaintiff's property lines.

ORDERED, the parties are directed to review the witnesses they have subpoenaed and to consider whether to excuse their subpoenaed witnesses who are not expected to testify concerning the above-noted issues.

The court will reconsider the permission granted to Uncle Eddie's and its cousel to not attend upon request of Plaintiff and good cause shown.

09/22/2022

Andrew F. Wilkinson

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

DENIED

09/19/2022

Andrew F. Wilkinson

Benjamin Estes
Plaintiff

vs.

Case No. C-21-CV-20-000430

Justin Holder, et
al. Defendant(s)

AMENDED MOTION TO ALTER OR AMMEND JUNE 9TH, 2021 ORDER DISMISSING BILL/ MOTION/DECLARATORY JUDGEMENT WITH PREDJUDICE

NOTICE: Amended to comply with Honorable Clerks June 23rd, 2021 deficiency notice striking first filing and requesting each case be captioned separately. Bill Quia Timet was captioned with case C-21-CV-20-000130/371/430 numbers together, and therefore Defendant has filed into all 3 cases.

The Defendant, in proper person, makes Motion to Alter or Amend order or decree, and for good and proper reasons stated herein,

On June 9th, 2021 the Honorable Court entered an order or decree stating "Upon consideration of the Defendant's Bill Quia Time and request for Declaratory Judgement and the opposition filed thereto, 1t is this 06/09/2021day by the Circuit Court of Washington County Maryland, Ordered the Defendant's request be Denied with Prejudice." Defendant has read the order and has determined there are 5 distinct interpretations of said order, and as such 4 distinct procedural responses and/or appeals from said order, all of which are mutual exclusive and prohibitive to explicitly protecting the Defendant's rights in response and action:

Entered: Clerk, Circuit Court for
Washington County, MD
September 20, 2022

1. The court treated the Defendant's Bill Quia Timet and incorporated claim for Declaratory Judgement as a counterclaim and dismissed both with prejudice on the merits, and without a hearing as requested.
2. The court treated the Defendant's Bill Quia Timet and incorporated claim for Declaratory Judgement as a counterclaim and dismissed only the Declartory Judgement requested with prejudice on the merits, and without a hearing as requested. That the Bill Quia Timet is active as a counter claim and open to demurrer, or final judgement on the merits.
3. The Bill Quia Timet was improperly filed as a motion and should have been filed as a counterclaim and denied on procedural grounds such that "with prejudice" is added to preclude filing bill in the same form, but does preclude filing the Bill Quia Timet as counter claim in this case.
4. That the Bill Quia Timet is active as a counter claim, however the Court determined the Declaratory Judgement preyed of the fact of the Stone was not at controversy and therefore the Defendant was not entitled to Declaratory Judgement as a procedural issue, and no final judgement was made on the merits. However Defendant is not precluded from additional declaratory judgement within the bill if/when the defendant does request said judgement.
5. That the Bill Quia Timet is active as a counter claim, however the Court determined the Declaratory Judgement preyed within the Bill was procedurally improper and dismissed the Declaratory Judgment preyed within the Bill as improper within the Bill, the prejudice to Defendant is exclusive to additional Declaratory Judgement actions within the Bill itself.

Wherefore the Defendant humble preys for the Honorable Court to Alter or Amend the Final Order with clarity and specificity such that Defendant may understand precisely what the Honorable Court has ordered and therefore choose the proper course of conduct to protect his rights, and pursue justice as Defendant is allowed under the rules, the Law, or in Equity.

Respectfully submitted,

Justin K. Holder

Justin Holder, Pro Se
Jholder2004@gmail.com
Tel. 240-356-2008

Defendant

Certificate of Service

I hereby certify that on this 23rd. day of June, 2021, the foregoing paper filed via MDEC and thus served electronically upon all registered parties, including:

Justin Holder, Pro Se,
Matthew Ruble, Esq.,
Robert L. Kline, III, Esq.,
Roland David Pembroke, Esq.,
Aaron Neal, Esq.,
Brendan Callahan, Esq.,
Talley Kovacs, Esq.

Justin K. Holder

Justin Holder, Pro Se

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES *

Plaintiff

v. * Case No.: C-21-CV-20-430

JUSTIN HOLDER, *et al.*

Defendants *

ORDER FOR CONTINUANCE

It is this 4 day of October, 2022, by the Circuit Court for Washington County, Maryland,

ORDERED, that good cause having been found, the above captioned case is hereby CONTINUED; and it is further

ORDERED, that the Civil Assignment office shall reschedule this matter for a two (2) day hearing.

Judge
Andrew F. Wilkinson

cc: All parties

Entered: Clerk, Circuit Court for
Washington County, MD
October 7, 2022

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES,

Plaintiff,

v. Case No. C-21-cv-20-000430

JUSTIN HOLDER, *et al.*

Defendants.

ORDER

Upon consideration of Defendant Justin Holder's Motion to Alter or Amend Judgment and Plaintiff Benjamin Estes' Opposition to Motion to Alter or Amend Judgment, it is this 1st of November, 2022 by the Circuit Court for Washington County, Maryland,

ORDERED, that Defendant's Motion to Alter or Amend Judgment be, and the same is, hereby DENIED.

Andrew B. Wilkinson

Judge, Circuit Court for Washington County
Andrew F. Wilkinson

Entered: Clerk, Circuit Court for
Washington County, MD
November 1, 2022

CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND
24 Summit Avenue
Hagerstown, Maryland 21740
Civil/Family/Juvenile: 301-790-4972 Criminal: 301-790-7941 General: 301-733-8660 Assignment: 240-313-2540
Maryland Relay Service: 711 Fax Civil/Family/Juvenile: 301-791-0507

Case Number: **C-21-CV-20-000430**
Other Reference Numbers: **C-21-CV-21-000130; CSA-REG-0624-2021**

BENJAMIN ESTES VS. JUSTIN HOLDER, ET AL.

ORDER

Defendant's Motion for Jury Trial concerning Plaintiff's request for injunction is denied.

11/07/2022
Date

Judge
Andrew F. Wilkinson

Entered: Clerk, Circuit Court for
Washington County, MD
November 7, 2022

0730

CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND
24 Summit Avenue
Hagerstown, Maryland 21740
Civil/Family/Juvenile: 301-790-4972 Criminal: 301-790-7941 General: 301-733-8660 Assignment: 240-313-2540
Maryland Relay Service: 711 Fax Civil/Family/Juvenile: 301-791-0507

Case Number: **C-21-CV-20-000430**
Other Reference Numbers: **C-21-CV-21-000130; CSA-REG-0624-2021**

BENJAMIN ESTES VS. JUSTIN HOLDER, ET AL.

ORDER

Defendant's Motion for New Trial is denied.

02/28/2023
Date

Judge
Andrew F. Wilkinson

Entered: Clerk, Circuit Court for
Washington County, MD
March 2, 2023

E-FILED Washington Circuit Court 3/2/2023 2:48 PM System System

E-FILED; Washington Circuit Court
Docket: 3/2/2023 2:48 PM; Submission: 3/2/2023 2:48 PM

0731

CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND
24 Summit Avenue
Hagerstown, Maryland 21740
Civil/Family/Juvenile: 301-790-4972 Criminal: 301-790-7941 General: 301-733-8660 Assignment: 240-313-2540
Maryland Relay Service: 711 Fax Civil/Family/Juvenile: 301-791-0507

Case Number: **C-21-CV-20-000430**
Other Reference Numbers: **C-21-CV-21-000130; CSA-REG-0624-2021**

BENJAMIN ESTES VS. JUSTIN HOLDER, ET AL.

ORDER

Defendant's Motion to Alter or Amend Judgment on Injunction is denied.

02/28/2023
Date

Judge
Andrew F. Wilkinson

Entered: Clerk, Circuit Court for
Washington County, MD
March 2, 2023

0732

CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND
24 Summit Avenue
Hagerstown, Maryland 21740
Civil/Family/Juvenile: 301-790-4972 Criminal: 301-790-7941 General: 301-733-8660 Assignment: 240-313-2540
Maryland Relay Service: 711 Fax Civil/Family/Juvenile: 301-791-0507

Case Number: **C-21-CV-20-000430**
Other Reference Numbers: **C-21-CV-21-000130; CSA-REG-0624-2021**

BENJAMIN ESTES VS. JUSTIN HOLDER, ET AL.

ORDER

Defendant's Motion to Revise/Dismiss is denied.

02/28/2023	
Date	Judge Andrew F. Wilkinson

Entered: Clerk, Circuit Court for
Washington County, MD
March 2, 2023

0733
DENIED

03/09/2023 Andrew F. Wilkinson
Andrew F. Wilkinson

March 5th 2023

Justin K. Holder
308 West Chapline Street
Sharpsburg, MD 21782
(240) 356 - 2008

Honorable Andrew F. Wilkinson
Judge - Washington County Circuit Court
24 Summit Ave, Hagerstown, MD 21740

Re: "and you will know the truth, and the truth will set you free." *(English Standard Version, 2020, John 8:32)*

Benjamin Estes v. Justin Holder, et al., Case No. c-21-cv-20-000430; Request to file Motion

Dear Honorable Andrew Wilkinson,

Pursuant to the Case Management Order entered on Sept. 20, 2021, Defendant Justin Holder requests to file a Motion in accordance with rule 2-535.

THE UNDISPUTED TRUTH

At the December 15/16th 2022 trial and in his bench memo Defendant Justin Holder was requesting this Court construe the Public's rights in accordance with Article IV of the Charter of Maryland, 20 June 1632, by which Charles I granted to Caecilius Calvert, Lord of Baltimore subjecting the grant to the reservation contained in Article XVI:

> "...***Saving always to US, our heirs and successors***, and to all the subjects of our kingdoms of England and Ireland, of US, our heirs and successors, ***the liberty of fishing*** for sea-fish, as well in the sea, bays, straits, and navigable rivers, as ***in the*** harbours, bays, and ***creeks*** of the province aforesaid, ***and the privilege of salting and drying fish on the shores of the same province;...***" [Emphasis Added]

Thus Justin Holder relies on rights reserved to the public[1] described as: "***Saving always to US, our heirs and successors, the liberty of fishing in the creeks and the privilege of salting and drying fish on the shores of the same province.***" (*1632 Kings Charter* Article XVI Cleaned up)[2]

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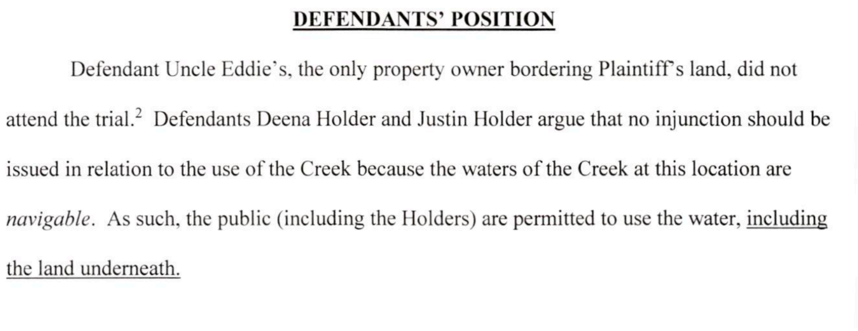
[1] In accordance with Art. 6 of the Md Declaration of Rights and Public Trust Doctrine, *see Kerpelman v. Bd. of Public Works*, 261 Md. 436, 445, 276 A.2d 56, (1971) ("The lands in Maryland covered by water were granted to the Lord Proprietor by Section 4 of the Charter from King Charles I to Caecillius Calvert, Baron of Baltimore, his heirs, successors and assigns, who had the power to dispose of such lands, subject to the public rights of fishing and navigation. *Browne v. Kennedy,* 5 H & J. 195 (1821). By virtue of Art. 5 of the Declaration of Rights in the Maryland Constitution, the inhabitants of Maryland became entitled to all property derived from and under the Charter and thereafter the State of Maryland had the same title to, and rights in, such lands under water as the Lord Proprietor had previously held.") *Id*

[2] The record unequivocally proves Defendant made clear the right existed without any consideration of "navigability" but reserved the right to make Plaintiff prove his case, regardless of Plaintiff's error in law.

Entered: Clerk, Circuit Court for
Washington County, MD
March 9, 2023

THE COURTS JANUARY 30th 2023 ORDER



DEFENDANTS' POSITION

Defendant Uncle Eddie's, the only property owner bordering Plaintiff's land, did not attend the trial.[2] Defendants Deena Holder and Justin Holder argue that no injunction should be issued in relation to the use of the Creek because the waters of the Creek at this location are *navigable*. As such, the public (including the Holders) are permitted to use the water, including the land underneath.

While Deena Holder's counsel erred in law as Plaintiff, Justin Holder's position was clearly stated over the coarse of trial, *see "THE UNDISPUTED TRUTH" supra.* Justin Holder unambiguously stated "navigability" was irrelevant to public rights.[3]

The "Defendant's Position" (was falsely stated by Honorable Andrew Wilkinson) and the record of the trial, pleadings, papers and evidence are incompatible and in direct contradiction of same. The Court's "imbroglio" ("That is, in non-navigable waters, the public has the right to boat, kayak, canoe, and swim, among other things that can be done on or within the water, but the public does not have the right to touch the land beneath the water.") The language in the court's order purporting to be *Stansbury v. MDR Development, LLC*, 161 Md. App. 594, 606-09 (2005) does not exist in Md. Law.

THE IMMEDIATELY APPEALABLE INJUNCTION - ISSUE OF FIRST IMPRESSION

MD. Courts and Judicial Proceedings Code Ann. § 12-303 (2021) "A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case:…(3) An order: (i) Granting or dissolving an injunction…"; and

the "reservation" ("***Saving always to US, our heirs and successors***, ***the liberty of fishing in the creeks and the privilege of salting and drying fish on the shores of the same province.")*** has never been extinguished by any Maryland law.

If this court has construed the "reservation" differently than Justin Holder has positioned himself at trial, this court should simply speak that truth in its order. Justin Holder should not be burdened with dropping a footnote in his Appellant Brief "There was a fraud upon the court."

Thus the Defendant would like to write a 2 page Motion requesting the court restate the Defendants position according to the "reservation" he relies on; and if the court determines the "reservation" does not allow the public to wade/walk, its "imbroglio" requires no clarification.

Justin K Holder

Justin Holder, *Pro Se*

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[3] The fact of "navigability" as it related to U.S. EPA and Army Corps. Of Engineer determinations on waterways is its own hot topic with a 24 state Attorney General lawsuit currently *sub judice, see State of West Virginia et al v U.S. Enviromental Protection Agency et al,* United States District Court for the District of North Dakota, United States, (2023) (Case 3:23-cv-00032-ARS).

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES *

Plaintiff

vs. * Case No.: C-21-CV-20-430

JUSTIN HOLDER, *et al.*

Defendants *

OPINION AND ORDER

This matter comes to the court on Plaintiff Benjamin Estes' Motion for Summary Judgment. Defendants Deena Holder, Justin Holder, and Uncle Eddie's Brokedown Palace, LLC oppose. A hearing was held, and the court took the matter under advisement.

PROCEDURAL HISTORY

On May 6, 2021, Plaintiff Benjamin Estes filed a "Second Amended Complaint" consisting of six (6) counts. In summary, Plaintiff seeks to quiet title concerning certain lands of which he believes he is the title owner and seeks damages for trespass and other torts by the Defendants.[1] By Order dated February 4, 2022, this court bifurcated the issues raised in the Second Amended Complaint, setting this matter for a three (3) day bench trial on the issues of Count 5 - Quiet Title and Count 6 - Ejectment. Depending on the outcome of the bench trial, the Court may later schedule the remaining Counts for jury trial.

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[1] Plaintiff also claims, in the alternative, ownership by adverse possession. Adverse possession is not the subject of this Opinion.

Entered: Clerk, Circuit Court for
Washington County, MD
September 20, 2022

Plaintiff now files a Motion for Summary Judgment on the issue of record ownership. Defendants oppose. The threshold issue for the court is whether the court can determine the location of the property line between Plaintiff's land and Defendant Uncle Eddie's land at this summary judgment stage.

THE PARTIES

Plaintiff owns land commonly known as Lot 2, Mt. Hebron Road, Keedysville, Maryland. Plaintiff purchased the property by deed dated March 13, 2013 and recorded among the Land Records of Washington County, Maryland at Liber 4491, folio 100.[2]

Defendant Uncle Eddie's Brokedown Palace, LLC ("Uncle Eddie's") owns land in Keedysville, Maryland, bordering on and abutting the Plaintiff's land. Uncle Eddie's land is described in a deed dated May 31, 2019 and recorded at Liber 6070, folio 197 ("Uncle Eddie's Deed"). Uncle Eddie's is registered as a New Mexico limited liability company created by Defendants Justin and Deena Holder, a married couple. As of the time of the filing of the instant motion, it was not registered to do business in the State of Maryland and its organization had not been completed to include any members. However, it is the title owner of land abutting Plaintiff's property.

Defendant Deena Holder owns two (2) parcels of property in Keedysville, Maryland, near the Plaintiff's land, but not abutting said lands.

Defendant Justin Holder is an original organizer of Uncle Eddie's, though such organization has not been completed.

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[2] All references to Deeds or Plats in this Opinion are from the Land Records of Washington County, Maryland.

FACTS

Plaintiff's land was subdivided from other property in 2007 by Plat 9186. Plat 9186 was approved by the Town of Keedysville Planning Commission in April 2007 and by the Mayor and Council in May 2007. It was recorded in August 2007. It shows the boundary line between Plaintiff's property and what is now Uncle Eddie's property as beginning at its southernmost point within or just along the western edge of the Antietam Creek (the "Creek"), then running within or just along the western edge of the Creek, then moving westward away from the Creek and into the lands bordering the Creek to the west, then moving overland until rejoining the western edge of the Creek as the Creek turns west at the northernmost point of the boundary.

Defendants first became involved in the neighboring property in April 2018 when the Estate of Mary Jane Hutzell transferred property to Uncle Eddie's by deed recorded at Liber 5726, folio 224 ("Hutzell Deed"). In August 2018, the property was transferred by Uncle's Eddie's to Deena Holder by deed at Liber 5827, folio 370 ("Deena Holder Deed"). In 2019 Deena Holder and Uncle Eddie's reconfigured several properties, resulting in a transfer back to Uncle Eddie's from Deena Holder by the Uncle Eddie's Deed. In each of said deeds, the disputed property line is described consistently with Plaintiff's deed and Plat 9186.

As part of the 2019 reconfiguration, a plat of reconfiguration, Plat 10955, was approved by the Town of Keedysville Planning Commission and by the Mayor and Council in April 2019. It was recorded in April 2019. From Plat 10955, part of the purpose of the reconfiguration appears to be a proposed extension of water and sewer service to Uncle Eddie's and Deena Holder's properties. The plat shows the boundary line between the Plaintiff's property and Uncle Eddie's property beginning at its southernmost point within or just along the western edge of the Antietam Creek, then running within or just along the western edge of the Creek, then moving westward away from the Creek and into the lands bordering the Creek to the west, then moving overland until rejoining the western edge of the Creek as the Creek turns west at the northernmost point of the boundary.[3]

Plat 10955 contain an owner's statement, executed by Defendant Justin Holder (on behalf of Defendant Uncle Eddie's) and by Defendant Deena Holder, personally, stating:

> I/we do hereby certify, for ourselves and our personal representatives, heirs and assigns, that I/we are the legal and true owner(s) of the property shown and described on this plat and that I/we hereby adopt the plan of subdivision shown hereon…[.]

After recording Plat 10955, Justin Holder, on behalf of Uncle Eddie's, and Deena Holder, personally, executed the Uncle Eddie's Deed dated May 31, 2019, describing Uncle Eddie's property as being the boundaries as they are shown on Plat 10955. In the deed, Mr. Holder, for Uncle Eddie's, and Mrs. Holder, personally, acknowledged that they elected not to have a title examination.

Defendants provide a deed from 1832 recorded at Liber NN, folio 520 ("Deed NN 520") and suggest it is the deed that originally created the property line between Plaintiff's land and Uncle Eddie's land. In its relevant portion, Deed NN 520 states, "to Little Antietam Creek; then down said Creek the nine following courses…[.]" The deed then lists the courses and distances. The parties agree that the courses and distances of Deed NN 520 do not remain within the water of the Creek. Rather, the courses take the property line westward away from the Creek and into the lands bordering the Creek to the west, then moving overland until rejoining the western edge of the Creek as the Creek turns west at the northernmost point of the boundary.

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[3] In July 2020, the Estate of Mary Jane Hutzell and Uncle Eddie's filed a "Confirmatory Deed" at Liber 6468, folio 345. The purpose of the Confirmatory Deed was to change the description of property originally transferred from Hutzell to Uncle Eddie's by the Hutzell Deed. The court presumes that Defendants believe the changed description (6468/345) granted more land to Uncle Eddie's than is shown on Plat 10955 and, thus, cured whatever mistake Defendants claim exists in Plat 10955 and the Uncle Eddie's Deed. However, nothing in the land records shows a corrective deed changing the description of the property line in the Deena Holder Deed (5827/370) or a corrective deed changing the description of the property line in the Uncle Eddie's Deed (6070/197).

PLAINTIFF'S POSITION

Plaintiff believes there are no facts in dispute and that the determination of the property line may be made by the court as a matter of law. Once the property line is determined, summary judgment follows as a matter of course. Plaintiff argues that his deed, citing Plat 9186, and Uncle Eddie's Deed, citing Plat 10955, show the correct property line and that the chains of title for both properties agree as to the location.

DEFENDANTS' POSITION[4]

Defendants argue that the recordation of Plat 10955, which reconfigured Uncle Eddie's and Deena Holder's properties, mistakenly indicated the disputed property line. Defendants argue that instead of looking to Plats 9186 and 10955, the court should look to Deed NN 520 from 18932 as the original deed that created the boundary. In that deed, Defendants ask this court to find that the scrivener's call to the Antietam Creek set the boundary between the properties as being the Creek itself (presumably the midline).

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[4] The court notes that Deena Holder's personal involvement on the issue considered in this Opinion – the location of the property line - is limited as she does not own property abutting Plaintiff's land. However, it is clear to this court that she was involved in the formation of Uncle Eddie's and, as such, has some interest in the current issue before the court. For that purpose, the court considers the defense arguments as presented by all defendants as a group.

STANDARD OF REVIEW

Maryland Rule 2-501(a) provides that a party may file a motion for summary judgment at any time "on the ground that there is no dispute as to any material fact and that the party is entitled to judgment as a matter of law." Md. Rule 2-501(a). The Court examines the pleadings, depositions, admissions, answers to interrogatories, and affidavits to determine "whether a genuine issue of material fact exists, and, if not, what the ruling of law should be, … resolving all inferences … against the moving party." *Gross v. Sussex*, 332 Md. 247, 256 (1993). Particularly, the court is tasked with deciding between two (2) options for the location of the property line: (a) the line as indicated on Plats 9186 and 10955, or (b) a line down the middle of the Creek.[5]

DISCUSSION

A. Plat 9186, Plat 10955, and Uncle Eddie's Deed.

As noted, Plaintiff purchased his property in 2013 following subdivision of his Lot 2 from a larger property. The plat of subdivision, Plat 9186, was approved by the Town of Keedysville Planning Commission and by the Mayor and Council. Recorded in August 2007, the plat shows the boundary line between Plaintiff's property and Uncle Eddie's property beginning at its southernmost point within or just along the western edge of the Antietam Creek, then running within or just along the western edge of the Creek, then moving westward away from the Creek and into the lands bordering the Creek, then moving overland until rejoining the western edge of the Creek at the northernmost point of the boundary.

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[5] At the summary judgment hearing, a third option was discussed – the "Dowling Line." An Affidavit of John Dowling, Esq. in support of summary judgment suggests that plotting the property line using various deeds after 1832 pushes the property line farther westward, and farther from the Creek, than is indicated in Plat 9186 and Plat 10955, thus giving Plaintiff *more* land than he claims in his Second Amended Complaint. Plaintiff has not amended the Second Amended Complaint to seek additional land and confines his claim to the property line as shown on Plat 9186 and Plat 10955. This third option – the "Dowling Line" – is not an option.

In 2018, the Estate of Mary Jane Hutzell transferred the neighboring property to Uncle Eddie's and described the property line consistently with Plaintiff's deed. The property was then transferred by Uncle's Eddie's to Deena Holder and the deed described the property line consistently with Plaintiff's deed. In 2019, Uncle Eddie's and Deena Holder reconfigured their property lines. The reconfiguration plat, Plat 10955, and the deed of transfer, incorporating Plat 10955, describe the property line consistently with Plaintiff's deed.

By the owner's statement on Plat 10955, Defendant Justin Holder (on behalf of Uncle Eddie's) and Deena Holder executed and acknowledged:

> I/we do hereby certify, for ourselves and our personal representatives, heirs and assigns, that I/we are the legal and true owner(s) of the property shown and described on this plat and that I/we hereby adopt the plan of subdivision shown hereon..[.]

The Uncle Eddie's Deed accepted the description of the Uncle Eddie's property as being the boundaries shown on Plat 10955.[6] Acknowledging that they understood that only a title examination could disclose issues affecting title (like Deed NN 520, perhaps), Uncle Eddie's and Mrs. Holder chose not to have a title examination.

The owner's statement on Plat 10955 indicates Uncle Eddie's acknowledgment of its ownership of the property as "shown and described" on the plat. In addition, the Uncle Eddie's Deed confirms acceptance and acknowledgement of the limits of Uncle Eddie's property in accord with Plat 10955. The Uncle Eddie's Deed and the predecessor deeds agree that the property line is as indicated in Plaintiff's deed. If Uncle Eddie's had a concern as to the location of the boundary line, the time to dispute that location would have been before recording the plat and the deed confirming the boundary line where Plaintiff's deed and Plat 9186 claim it to be.

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[6] *Emerald Hills Homeowners' Ass'n, Inc. v. Peters*, 446 Md. 155, 170 (2016), *affirmed* 446 Md. 155 (2016) ("It is well-settled that reference to a plat in a deed incorporates that plat as part of the deed.").

The court notes that the Estate of Mary Jane Hutzell and Uncle Eddie's filed a "Confirmatory Deed" in July 2020 attempting to change the description in the Hutzell Deed (5726/224). However, nothing in the land records shows a corrective deed changing the description of the property line in the Deena Holder Deed (5827/370) or the Uncle Eddie's Deed (6070/197). Nothing in the land records shows a re-plat of Plat 10955. Uncle Eddie's may have attempted to correct an alleged mistake in the deed transferring out of the Estate of Mary Jane Hutzell, but the "correction" has not been carried through to the current deed of the property or the current plat.

With no re-plat of Plat 10955, and no corrective deed changing the description of the Uncle Eddie's Deed, this is not a case where there are two (2) current, competing deeds that show a deed overlap. Instead, the current deeds and plats agree as to the description of the boundary between them.

Of course, the court recognizes that Uncle Eddie's goal is to have the property line at the midline of the Creek, thus giving Uncle Eddie's additional land. For the court to consider the Creek as the property line, the court would be required to ignore Plat 9186, Plat 10955, the Deena Holder Deed, the Uncle Eddie's Deed, the acknowledgements therein, and that there has been no correction of the current deed and plat of the Uncle Eddie's property. While the court could take the position that it will not now hear the Defendants disclaim a property line that they confirmed in 2019 and did not correct, before making such a finding, the court will consider the argument concerning deed interpretation.

B. Interpretation of Deed NN 520.

Defendant indicates that Deed NN 520 is the deed that originally created the property line. In its relevant portion, Deed NN 520 describes the line as, "to Little Antietam Creek; then down said Creek the nine following courses…[.]" The deed then lists the nine (9) courses and distances. When platted, the pertinent courses do not remain within the body of the Creek.

The parties disagree as to the proper interpretation of the words of Deed NN 520. Defendants suggest that the words "to Little Antietam Creek; then down said Creek…" are a call to a physical monument and that such call trumps the words "the nine following courses…" and the listed courses. In short, Defendants ask the court to ignore the described courses and establish the Creek as the boundary between Plaintiff's land and Uncle Eddie's land. Plaintiff argues that although "to Little Antietam Creek; then down said Creek…" may be a call to a physical monument, proper interpretation cannot then ignore the words "the nine following courses…" and the courses and distances listed thereafter.

The interpretation of deeds and plats is a question of law.[7] When interpreting a deed or plat, the principal obligation of the court is to determine the original intent of the grantor at the time of the conveyance.[8] As with contracts, the court first looks within the four corners of the instrument to determine whether there is ambiguity.[9] If there is no ambiguity, the court gives the words their plain and fair meaning, staying within the four corners. If there is ambiguity, the court may look to extrinsic evidence to give the words context and meaning.

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[7] *Webb, et ux. v. Nowak, et ux.*, 433 Md. 666, 681 (2013).

[8] *Zawatsky Const. Co., Inc. v. Feldman Development Corp.*, 203 Md. 182, 187 (1953).

[9] *Millar v. Bowie*, 115 Md. App. 682, 698 (1997).

When considering a deed, an issue can arise where a physical monument is used to describe a location that differs from a statement of course and distance. With this type of conflict, the general rule is that a call to a monument is preferred to a conflicting course and distance because the monument is more readily and accurately identifiable.[10] However, the general rule is not absolute, and "the established rules as to preference [to calls for monuments over courses and distances] are simply guides to ascertain the intention of the parties."[11] Where strict application of the monument rule would defeat the clear intentions of the original parties, the rule is not applied.[12]

Accepting for argument purposes that Deed NN 520 describes the boundary, the deed provides that the boundary begins at a point: "to Little Antietam Creek[.]" The deed then provides that the line moves "then down said Creek the nine following courses…[.]" Defendants ask this court to strictly apply the general rule that monuments trump courses and find that the words "down said Creek" means that the boundary is the Creek, ignoring "the nine following courses" and the courses listed thereafter.

In this court's judgment, Deed NN 520 is unambiguous. By the inclusion of the courses and distances, the grantor intended that the property line described was to leave the body of the Creek. The parties agree that the courses and distances of Deed NN 520 do not remain within the water of the Creek. Rather, the courses take the property line westward away from the Creek and into the lands bordering the Creek to the west, then moving overland until rejoining the western edge of the Creek as the Creek turns west at the northernmost point of the boundary. If the grantor had intended that the property line would be the Creek itself or would run along the water's edge, the grantor would have indicated so.[13] The grantor would not have provided for a deviation away from the Creek bed. Because of the deviation, this court does not apply the "monument rule" because ignoring the grantor's courses, and the deviation away from the Creek intended thereby, would destroy the "manifest intent" of the grantor.[14]

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[10] *Wood v. Hildebrand,* 185 Md. 56, 60-61 (1945).

[11] *Union United Methodist Church, Inc. v. Burton,* 404 Md. 542, 558 (2008), *quoting Dundalk Holding Co. v. Easter,* 195 Md. 448, 495 (1950).

[12] *Zawatsky*, 203 Md. at 187, *citing Giles v. diRobbio*, 186 Md. 258, 265 (1946).

C. The Relief of Count 5.

In Count 5, Plaintiff requests the court to enter judgment: (1) confirming the location of the shared boundary line, (2) determining that he is the owner of his property, including the land under the water of the Creek, and (3) enjoining the Defendants from entering his land. Particularly, the court is tasked with deciding between two (2) options for the location of the property line: (a) the line as indicated on Plats 9186 and 10955, or (b) a line down the middle of the Creek. For all of the reasons noted above, the court finds, as a matter of law, that the boundary line between the Plaintiff's land and Uncle Eddie's land is as indicated on Plat 10955.

As to the other relief, the Court does not grant summary judgment on the issues of: (1) whether Plaintiff's rights to the land under the water of the Creek prohibits others, including the Holder family, from using the Creek bottom within Plaintiff's property line, and (2) injunction. This case will proceed for bench trial as currently scheduled on these issues.

In addition, the court is not prepared to consider summary judgment on Counts 1-4 until after the bench trial on the remaining issues noted above.

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[13] The court notes in Deed NN 520 that the grantor made a subsequent call to the "center of the Turnpike Road, and with the center of said Road..[.]" This is an indication that the grantor knew how to describe a line within the center of a monument, something he did not do with the Creek.

[14] *Zawatsky*, 203 Md. at 187, *citing Giles v. diRobbio*, 186 Md. 258, 265 (1946).

CONCLUSION

For the foregoing reasons, it is this 19th day of September 2022, by the Circuit Court for Washington County, Maryland, hereby:

ORDERED, that Plaintiff's Motion for Summary Judgment is granted in part, denied in part, and held under advisement in part.

ORDERED, that the boundary line between the Plaintiff's lands and the lands of Defendant Uncle Eddie's Brokedown Palace, LLC is as indicated on Plat 10955, one of the Plat Records of Washington County, Maryland.

ORDERED, that the court denies summary judgment on the issues of: (1) whether Plaintiff's rights to the land under the water of the Creek prohibits others, including the Holder family, from using the Creek bottom within Plaintiff's property line, and (2) injunction. This case will proceed for bench trial as currently scheduled on these issues.

ORDERED, that the court holds under advisement any demands for summary judgment on Counts 1-4.

The parties are reminded that the bench trial does not concern Counts 1-4 or any potential damages therefrom. There is no need to file jury voir dire, jury instructions, or a proposed verdict sheet for the bench trial.

Judge, Circuit Court for Washington County

cc: All counsel and parties

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES *

Plaintiff

vs. * Case No.: C-21-CV-20-430

JUSTIN HOLDER, *et al*.

Defendants *

OPINION

This matter comes to the court on Plaintiff Benjamin Estes' request for injunction in his Second Amended Complaint. Plaintiff seeks injunction against Defendants Uncle Eddie's Brokedown Palace, LLC, Deena Holder, and Justin Holder. The court conducted a two (2) day trial in December 2022 and took the matter under advisement.

Defendant Uncle Eddie's Brokedown Palace, LLC did not attend trial, with or without counsel.

Defendants Deena Holder did not attend trial in person, but she was represented by counsel at trial.

Defendant Justin Holder attended *pro se*.

PROCEDURAL HISTORY

On May 6, 2021, Plaintiff Benjamin Estes filed a "Second Amended Complaint" consisting of six (6) counts. In summary, Plaintiff seeks to quiet title concerning certain lands of which he believes he is the title owner and seeks damages for trespass and other torts by the

Entered: Clerk, Circuit Court for
Washington County, MD
January 30, 2023

Defendants. By Order dated February 4, 2022, this court bifurcated the issues raised in the Second Amended Complaint, setting this matter for bench trial on the issues of Count 5 (Quiet Title) and Count 6 (Ejectment), and injunctions related thereto. Depending on the outcome of the bench trial, the Court would later schedule the remaining Counts for jury trial.

Prior to trial on Count 5 (Quiet Title) and Count 6 (Ejectment), this court considered a Motion for Summary Judgment filed by Plaintiff. After a hearing in which all Defendants participated, this court issued an Opinion and Order dated September 19, 2022 granting summary judgment, in part, in favor of Plaintiff. Particularly, this court ordered:

1. That the boundary line between the Plaintiff's lands and the lands of Defendant Uncle Eddie's Brokedown Palace, LLC is as indicated on Plat 10955, one of the Plat Records of Washington County, Maryland.
2. That the issue of injunction against the Defendants would proceed to further bench trial.

THE PARTIES

Plaintiff owns land commonly known as Lot 2, Mt. Hebron Road, Keedysville, Maryland. Plaintiff purchased the property by deed dated March 13, 2013 and recorded among the Land Records of Washington County, Maryland at Liber 4491, folio 100.[1]

Defendant Uncle Eddie's Brokedown Palace, LLC ("Uncle Eddie's") owns land in Keedysville bordering on Plaintiff's land. Uncle Eddie's land is described in a deed dated May 31, 2019 and recorded at Liber 6070, folio 197 ("Uncle Eddie's Deed"). Uncle Eddie's is registered as a New Mexico limited liability company organized by Defendants Justin and Deena Holder, a married couple.

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[1] All references to Deeds or Plats in this Opinion are from the Land Records of Washington County, Maryland.

Defendant Deena Holder owns two (2) parcels of property in Keedysville, Maryland, near the Plaintiff's land, but not abutting said lands.

Defendant Justin Holder is an original organizer of Uncle Eddie's. Justin Holder does not personally own any of the land discussed in this case.

FACTS

Plaintiff's land was subdivided from other property in 2007 by Plat 9186. Plat 9186 was approved by the Town of Keedysville Planning Commission in April 2007 and by the Mayor and Council in May 2007. It was recorded in August 2007. It shows the boundary line between Plaintiff's property and what is now Uncle Eddie's property as beginning at its southernmost point within or just along the western edge of the Antietam Creek (the "Creek"), then running within or just along the western edge of the Creek, then moving westward away from the Creek and into the lands bordering the Creek to the west, then moving overland until rejoining the western edge of the Creek as the Creek turns west at the northernmost point of the boundary.

Defendants first became involved in the neighboring property in April 2018 when the Estate of Mary Jane Hutzell transferred property to Uncle Eddie's by deed recorded at Liber 5726, folio 224 ("Hutzell Deed"). In August 2018, the property was transferred by Uncle's Eddie's to Deena Holder by deed at Liber 5827, folio 370 ("Deena Holder Deed"). In 2019 Deena Holder and Uncle Eddie's reconfigured several properties, resulting in a transfer back to

Uncle Eddie's from Deena Holder by the Uncle Eddie's Deed. In each of said deeds, the disputed property line is described consistently with Plaintiff's deed and Plat 9186.

As part of the 2019 reconfiguration, Plat 10955 was executed by Defendants and was approved by the Town Planning Commission and by the Mayor and Council in April 2019. It was recorded in April 2019. The plat shows the boundary line between the Plaintiff's property and Uncle Eddie's property beginning at its southernmost point within or just along the western edge of the Antietam Creek, then running within or just along the western edge of the Creek, then moving westward away from the Creek and into the lands bordering the Creek to the west, then moving overland until rejoining the western edge of the Creek as the Creek turns west at the northernmost point of the boundary.

On partial summary judgment, this court determined that the boundary line between the lands of Plaintiff and Uncle Eddie's is as indicated on Plat 10955. Plaintiff now seeks an injunction to enjoin Defendants from entering his land, with attention paid to whether, and to what extent, Defendants are permitted to access or use the Little Antietam Creek and tributaries thereto as they traverse within Plaintiff's property lines. Additional facts are explained below.

PLAINTIFF'S POSITION

Plaintiff believes an injunction should issue against the Defendants to enjoin Defendants from entering his land. Regarding the Creek and tributaries, Plaintiff believes that because the waters of the Creek at this location are *non-navigable*, he is the owner of the land under the water of the Creek, and an injunction should enjoin Defendants from touching the land under the water within his property lines.

DEFENDANTS' POSITION

Defendant Uncle Eddie's, the only property owner bordering Plaintiff's land, did not attend the trial.[2] Defendants Deena Holder and Justin Holder argue that no injunction should be issued in relation to the use of the Creek because the waters of the Creek at this location are *navigable*. As such, the public (including the Holders) are permitted to use the water, including the land underneath.

STANDARD

The standard for the grant of an injunction is a four-factor test:

(1) The existence of a right which could be injured without an injunction;
(2) Whether the plaintiff will suffer irreparable injury without an injunction;
(3) The "balance of convenience" determined by whether greater injury would be done to the defendant by granting the injunction than from its refusal; and
(4) In the appropriate case, the public interest.

Injunctive relief is "a preventative and protective remedy, aimed at future acts, and is not intended to redress past wrongs." *El Bey v. Moorish Science Temple of America, Inc.,* 362 Md. 339, 353 (2001) (citations omitted).

As the Court of Appeals noted in *El Bey,* the injury:

> …need not be "beyond all possibility of compensation in damages, nor need it be very great." Rather, "irreparable injury is suffered whenever monetary damages are difficult to ascertain or are otherwise inadequate."

Id., at 355-56 (citations omitted). The burden of rests with the party seeking injunction and the failure to prove the existence of any factor precludes injunctive relief. *Fogle v. H & G Restaurant, Inc.,* 337 Md. 441, 456 (1995).

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[2] By not attending trial, the court assumes that Uncle Eddie's consents to the entry of an injunction, if such injunction is determined to be appropriate by this court.

DISCUSSION

A. Navigable and Non-navigable Waters in Maryland.

The overriding issue in this case is whether the waters of the Creek and tributaries within Plaintiff's property lines are navigable or non-navigable.

If the waters are navigable, then the public (Defendants included) have the right to be on top of the water, to be within the water, and to touch the land under the water. *Stansbury v. MDR Development, LLC*, 161 Md. App. 594, 606-09 (2005). That is, in navigable waters, the public has the right to boat, kayak, canoe, swim, play, and *walk* or *stand* on the land beneath the water. *Id.*

If the waters are non-navigable, then the public (Defendants included) have more limited rights to the use of the water. *Id.* They have the right to be on top of the water and to be within the water, but they do not have the right to *walk* or *stand* on the land under the water. *Id.* That is, in non-navigable waters, the public has the right to boat, kayak, canoe, and swim, among other things that can be done on or within the water, but the public does not have the right to touch the land beneath the water. *Id.*

Case law provides two (2) independent tests for navigability: (1) whether the water is subject to the ebb and flow of the tides, or (2) whether the water is of such width, depth, or has other characteristics that make it usable, in its ordinary condition, as highways of commerce over which trade and travel can be conducted by customary modes of trade and travel on water. *Gray, et al. v. Gray*, 178 Md. 566, 574 (1940); *Wicks v. Howard*, 40 Md. App. 135, 136 (1978). Water that meets either of these criteria is deemed *navigable* and the State of Maryland, as custodian of the public trust, maintains rights in the land under the water for the good of the public at large. Because the State maintains rights, the public is permitted to use not only the water, but also the land underneath. Failing these tests, however, means that the land under the water is owned by the fee holder. The water may be used by the public, but the land underneath is owned solely for their benefit of the fee holder. The public is not permitted to touch the land.

B. The Creek and its tributaries.

The court received a significant amount of evidence at trial concerning navigability, including testimony, photographs, and video, all geared toward showing the width, depth, water and land characteristics, and flow of the Creek and tributaries. In addition, the evidence showed whether there were obstructions that would hamper travel on or within the water.

As to the first test – the tidal test – the court notes that the Creek is a significant distance from the Atlantic Ocean or the Chesapeake Bay. There is no possibility that these waters are subject to the ebb and flow of the tides. In addition, evidence was presented indicating that the Creek is classified as a Class III-P waterway. COMAR 26.08.02.02 provides that Class III-P waters are non-tidal.

As to the second test - the characteristics that make the Creek usable for trade and travel - the evidence presented at trial indicates that the depth of the water for a majority of the length of Creek as it traverses within Plaintiff's property lines is ankle deep to knee deep. The tributaries are even more shallow. There is an area at the southernmost point near the old train bridge that large rocks protrude above the water line, creating a walking area where a person can walk from one side of the Creek to the other without difficulty, probably without getting wet. There are other areas where the water level is so low that a person in a kayak or canoe would run aground and would have to get out and walk the kayak or canoe to a slightly deeper area. For the length of the Creek within Plaintiff's property lines, the Creek is not deep enough for any boat, large or small, motorized on not, to make it through without running aground somewhere.

To be sure, there are two (2) areas of the Creek – the "pools" – that can more easily support kayaks and canoes, maybe even swimming. Here, the water is generally knee to waist deep, sometimes four (4) to five (5) feet deep. These pools do not extend a great distance and are traversed at their inflow and outflow by rocks or spits of land that impede any travel through or beyond them by boat or other mode without running aground.

Also, there are certainly times that the Creek runs higher after heavy rain or significant snow melt. However, even then, there is no evidence that the water level would be high enough to support any boat, large or small, motorized on not, to make it through without running aground. Defendant Justin Holder argued the water may be high enough at times to float logs, noting that dead trees sometimes float in the Creek. Dead trees floating in the Creek are far different than using the Creek for a commercial logging enterprise.

For these reasons, the court finds that the Creek and its tributaries are *non-navigable* as its runs within the Plaintiff's property lines.

C. Defendants' Evidence and Argument.

Defendants, particularly Justin Holder, presented a significant amount of information at trial, including evidence and argument related to statutes, COMAR, deeds, and other materials. For purpose of completeness, discussion of these materials is appropriate. Mr. Holder asked the court to review and consider:

1. U.S. Code:

   Mr. Holder asks this court to review 33 U.S.C. 403 concerning the construction of obstacles in the waters of the United States. § 403 does not provide guidance in this case.

2. Code of Federal Regulations and the Army Corps of Engineers:

   Mr. Holder asks this court to review 33 C.F.R. 329 and a 2005 Permit to the Town of Keedysville as evidence that the Creek is navigable water. The court has reviewed all of § 329 and notes that it defines the navigable waters of the United States and defines the authority of the Corps of Engineers in its work.

   In 2005, the Corps of Engineers issued Permit 200561839 to the Town of Keedysville concerning work to be conducted by the Town near Plaintiff's property. Mr. Holder suggests that the words "navigable waters" within the Permit means that the water where the project was conducted is navigable water as determined by the Corps of Engineers.

   Mr. Holder's suggested reading of the Permit and the words "navigable waters" therein is incorrect and does not lead to a conclusion that the Creek or its tributaries are navigable.

3. Maryland Statutes:

   Mr. Holder asks this court to review various portions of the Maryland Code. *Environment* § 5-101 discusses the policy of the State to preserve the waters of the State. *Environment* § 5-503 requires a permit to build or repair a reservoir, dam or other waterway obstruction related to the waters of the State, except tidal waters. *Natural Resources* § 8-101 defines the waters of the State; *Criminal Law* § 6-402 prohibits trespass on posted property. Individually, or together, the statutes do not provide guidance in this case.

4. Maryland House Bill 211 (1986) and associated legislative materials.

   Mr. Holder asks this court to review Maryland House Bill 211 (1986) for the proposition that the waters of the state are to be open to the public for swimming, bathing, wading, diving, tubing, rafting, and other uses involving contact with the water. Though House Bill 211 specifically dealt with the Potomac River by its terms, Defendant asks this court find that the legislative intent of the General Assembly was that all waters within the State are to be similarly open to the public. The court does not agree. House Bill 211 clearly dealt with parts of the Potomac River and not any other water in the State. House Bill 211 does not provide guidance in this case.

5. Maryland House Bill 797 (2013) and associated legislative materials.

   Mr. Holder asks this court to review Maryland House Bill 797 (2013) for the proposition that waters within the State are the "public highway" and that the rights of the public cannot be restricted by private property owners. House Bill 797 (2013) directed State and local government to consider reasonable measures when constructing or improving bridges to allow for safe access to waters for anglers, canoeists, and kayakers. Such direction to State and local government does not provide guidance in this case.

6. Maryland Cases and the King's Charter:

   At trial, and by his Bench Trial Memorandum, Mr. Holder argues that ownership by Defendant Uncle Eddie's should be to the midline of the Creek and, therefore, the issues of navigability and injunction should be moot. This court declines to follow Mr. Holder's argument because this court determined on summary judgment that the location of the property line between Plaintiff's land and the land of Uncle Eddie's is not the midline of the Creek. As such, the Maryland cases do not give further direction to this court.

   In addition, the real party in interest in this matter to assert the property line is Uncle Eddie's, the owner neighboring Plaintiff's land. As noted, Uncle Eddie's did not attend trial. Pursuant to Md. Rule 2-131(a), a person other than an individual must be represented by counsel in the Circuit Court, including at trial. Individually, Justin Holder, individually, has no rights in the lands at issue in this case. He has no standing to assert rights to the midline of the Creek. Uncle Eddie's did not assert any rights at trial and, therefore, no rights will be conferred to it.

7. COMAR:

   Mr. Holder asks this court to review COMAR 26.08.02 and related sections for the proposition that the public may use the Creek as a Class III-P waterway for water contact sports and play and for fishing. While the Creek may be classified as a Class III-P waterway, the conclusion that Mr. Holder wants cannot be sustained. COMAR 26.08.02.02 provides that Class III-P waters are non-tidal and may be used for the same purposes as Class I waters, with the addition of trout preservation and public water supply. Class I waters may be used for water contact sports and play, fishing, and industrial or agricultural water supply. However, nothing in COMAR suggests that water contact sports or fishing means the public may touch the bottom of the water source on private land if the water is non-navigable. Instead, COMAR 26.08.02.02 speaks only to the public coming into contact with the water (*i.e.*, canoeing, kayaking, swimming). Whether the public is allowed to touch the land under the water is a matter of navigability, not a matter of COMAR.

8. Deeds:

Mr. Holder asks this court to determine that certain water rights to the Creek have been reserved to the lands of Uncle Eddie's and/or Deena Holder through various deeds. Mr. Holder presented deeds and his lay testimony as to what the deeds say and what lands are involved in such deeds. He attempted, through hearsay, to explain what his expert(s) said to him about the history of the lands at issue.

As noted above, the real party in interest to assert reserved water rights is Uncle Eddie's, the owner neighboring Plaintiff's land. Uncle Eddie's did not attend trial. Individually, Justin Holder has no standing to assert claims of reserved rights. Uncle Eddie's and Deena Holder did not assert any rights at trial and, therefore, no rights will be conferred.

9. Estoppel per Maryland Rule 2-506(d):

Mr. Holder argues that Plaintiff is estopped by Md. Rule 2-506(d) from bringing this action because:

   a. Plaintiff had previously filed, and dismissed, a request for peace order against Mr. Holder in the Washington County District Court generally regarding the same actions as complained of here.
   b. The State of Maryland entered a *nol pros* on trespass charges against Mr. Holder generally regarding the same actions complained of here.
   c. Plaintiff entered a stipulation with the State of Maryland/DNR in this case confirming that Plaintiff was not seeking to preclude the public from use of the Creek, to the extent that this court determines what that use may be.

None of the previous legal actions alone, or taken together, have a preclusive effect on the instant action.

10. Prescriptive easement in favor of the public:

Mr. Holder presented several witnesses who testified that they walked and swam in the Creek as children and even into adulthood. Mr. Holder argues that there is use by prescription benefitting the public to use the Creek for these types of purposes. The court is not aware of any legal theory by which

> the public at large can become the beneficiary of an easement of use due to the actions of a limited number of people. Even if the argument had sound legal foundation, Defendants did not produce sufficient or compelling evidence to meet any of the factors for which this court could entertain prescription as a basis for the public to use the Creek. The use of the water by the public has never been the issue in this case. This court need not entertain a theory not supported by law or fact.

D. Injunction.

Plaintiff requests that Defendants be enjoined from entering Plaintiff's land. The evidence at trial established that Mr. and Mrs. Holder have intruded into Plaintiff's land in the past. Mr. and Mrs. Holder's arguments at trial indicate that they believe they have a right to use the land under the Creek for their purposes.

Evidence at trial established clear animosity between Mr. Holder and Plaintiff. Plaintiff provided evidence of email and video from Mr. Holder to Plaintiff of a somewhat threatening nature. The video showed Mr. Holder walking in the Creek on Plaintiff's property and suggested Mr. Holder's intention was to "keep an eye" on Plaintiff.

Plaintiff has property rights to protect. Plaintiff will suffer irreparable injury if continued intrusions are permitted. The balance of convenience weighs in favor of Plaintiff. Defendants suffer nothing from the entry of an injunction. The public interest is served by limiting controversy between the parties. A permanent injunction will be entered against all Defendants related to their use of the **land** within Plaintiff's property lines, including the land under the water of the Little Antietam Creek and its tributaries.[3]

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[3] Deena Holder asks not to be enjoined because she has no direct interest in this matter and she does not deserve to be enjoined. From information received in a previous proceeding, it is clear that Justin Holder and Deena Holder use Uncle Eddie's as an alter-ego to hold the land neighboring Plaintiff's property. The issue in this case is not whether Mrs. Holder has been cordial to Plaintiff (she has been cordial). The issue is whether she has argued that she has the right to use the land under the water (she has so argued) and whether she is involved with Uncle Eddie's (she is).

CONCLUSION

For the foregoing reasons, an injunction will be issued in favor of Plaintiff and against the Defendants. A separate Order will issue consistent with this Opinion.

JAN. 30, 2023
Date

Judge, Circuit Court for Washington County

cc: Counsel of Record
Justin Holder

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES *

Plaintiff

vs. * Case No.: C-21-CV-20-430

JUSTIN HOLDER, *et al*.

Defendants *

ORDER

This matter came to the court on Plaintiff Benjamin Estes' request for injunction in his Second Amended Complaint against Defendants Justin Holder, Deena Holder, and Uncle Eddie's Brokedown Palace, LLC. Consistent with an Opinion issued this same date, it is this 30th day of January 2023, by the Circuit Court for Washington County, Maryland hereby:

ORDERED, that Plaintiff's request for injunction is granted.

ORDERED, that Defendants Justin Holder, Deena Holder, Uncle Eddie's Brokedown Palace, LLC, and any member or agent thereof, be and are hereby permanently enjoined from coming into contact with Plaintiff's land within Plaintiff's property lines as determined in this case, including the land under the water of the Little Antietam Creek and its tributaries within Plaintiff's property lines.

ORDERED, that Defendants Justin Holder, Deena Holder, Uncle Eddie's Brokedown Palace, LLC, and any member or agent thereof, shall not grant permission to any other person to come into contact with Plaintiff's land within Plaintiff's property lines as determined in this case, including the land under the water of the Little Antietam Creek and its tributaries within Plaintiff's property lines.

Judge, Circuit Court for Washington County

cc: Counsel of Record
Justin Holder

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES *

Plaintiff

v. * Case No.: C-21-CV-20-430

JUSTIN HOLDER, *et al.*

Defendants *

ORDER

(Rule 2-602(b) – Final Judgment)

The court notes that Defendant Justin Holder has filed an appeal to the Appellate Court of Maryland concerning this court's opinion and order dated January 30, 2023 related to an injunction imposed against the defendants.

This court issued a separate opinion and order dated September 19, 2022 related to the location of the property line between the various parties, which property line bears special relevance to the injunction issue.

THEREFORE, finding that judicial economy is best served hereby and that there is no just reason for delay, it is this 23rd day of March 2023, by the Circuit Court for Washington County, Maryland, hereby:

ORDERED, that pursuant to Maryland Rule 2-602(b), this court's Opinion and Order dated September 19, 2022 be and is hereby entered as a final judgment, even though additional claims (trespass, etc.) remain outstanding in this case.

Judge, Circuit Court for Washington County

cc: Counsel and parties of record

Entered: Clerk, Circuit Court for
Washington County, MD
March 24, 2023